



February 15, 2001

Ms. Regina T. Grimes
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 13401
Austin, Texas 78711

OR2001-0589

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID # 144232.

The Texas Department of Criminal Justice (the "department") received a request for information, including any current parole violation reports, relating to a named offender's eligibility for hearing prior to confinement in a particular type of facility. You inform this office that the department has released some of the requested information. You claim that information relating to parole violations is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

You acknowledge that in asking for this attorney general decision, the department failed to comply with section 552.301 of the Government Code. Section 552.301(b) provides that a governmental body which seeks to withhold requested information from disclosure "must ask for the attorney general's decision and state the exceptions [to disclosure] that apply . . . not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You note that although the request for information is dated October 14, 2000, the department appears to have received it on November 14. You acknowledge, however, that the department did not ask for this attorney general decision within ten business days of its

receipt of the request. Therefore, as the department failed to comply with section 552.301(b), it must release the requested information unless there is a compelling reason to withhold it from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ). Generally, the operation of section 552.302 can be overcome by a demonstration that information is confidential by law or that it implicates the privacy interests of a third party. *See Open Records Decision Nos. 630 at 3 (1994), 325 (1982).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is confidential under another statute. You claim that the submitted information is confidential under section 508.313 of the Government Code. Chapter 508 of the Government Code pertains to the Board of Pardons and Paroles. Section 508.313 provides in relevant part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see also* Gov't Code § 508.052(a) (permitting access to department's computerized and printed records to be provided to Board of Pardons and Paroles).

In this instance, you represent to this office that the documents submitted to this office are "pages *included in release plan* records obtained and maintained by the Board of Pardons and Paroles which relate to releasees[.]" (Emphasis in original.) You further inform us that "[a]ll information on these pages also relates to 'an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency' and to 'a person directly identified in any proposed plan of release for an inmate.'" You therefore assert that the submitted information is confidential under section 508.313(a) of the Government Code. Upon consideration of your representations and our review of the

information in question, we conclude that it is confidential under section 508.313 of the Government Code. Therefore, the requested information is excepted from disclosure under section 552.101 of the Government Code and must not be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

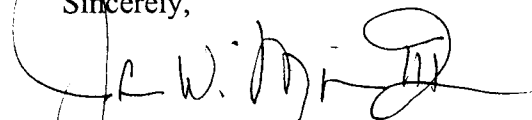
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144232

Encl. Submitted documents

cc: Mr. Wade H. Russell
Attorney at Law
404 West 13th Street
Austin, Texas 78701
(w/o enclosures)